

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY APRIL 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 1348**

**Introduced by Assembly Member Lowenthal**

February 21, 2003

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An act to amend Sections ~~25250.7 and 25200.19~~ *25200.19 and 25250.7* of, and to add Section 25160.6 to, the Health and Safety Code, and to add Section 42702 to the Public Resources Code, relating to hazardous and solid waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1348, as amended, Lowenthal. Hazardous and solid waste.

(1) Existing law requires any person generating hazardous waste that is transported, or submitted for transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, to complete a manifest prior to the time the waste is transported or offered for transportation and to submit the manifest to the Department of Toxic Substances Control. A violation of the hazardous waste control laws is a crime.

This bill would require a facility operator that rejects an entire shipment or partial shipment of hazardous waste to ~~sign and date the manifest in a specified manner and would require the transporter of that hazardous waste to either return the entire or partial shipment waste to the generator, or transport the entire or partial shipment~~ *direct the waste to an approved alternate designated facility agreed upon by the generator, in accordance with a specified procedure.* The bill would

~~provide that the generator of a hazardous waste shipment rejected pursuant to this procedure is the designated facility for the receipt of the hazardous waste and that the facility operator that rejects an entire or partial shipment of hazardous waste is not the generator of that waste.~~

*The bill would provide that a facility operator that rejects an entire shipment or partial shipment of hazardous waste is not the generator, arranger for disposal, nor a transporter, as specified of that hazardous waste. The bill would specify accumulation limits on the generation of hazardous waste who receives a rejected shipment.*

The bill would require a generator or transporter to instead comply, as specified, with federal regulations, if the *United States* Environmental Protection Agency adopts regulations pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA) *that preempt, or are more stringent than, state regulation.*

Since a violation of these requirements would be a crime pursuant to other provisions of law, the bill would impose a state-mandated local program by creating new crimes.

(2) Existing law allows a hazardous waste facility that meets specified conditions to conduct bulk, packaged, or containerized unloading and loading operations, as defined, pursuant to specified criteria, including that the loading or unloading be conducted within secondary containment that meets the requirements of any regulations adopted by the department for bulk transfers.

~~This bill would instead require the secondary containment to be designed to allow the practical use of trucks and railcars, and would exclude that secondary containment from specified requirements for permitted tank and container storage areas. The bill would authorize the department to establish specific secondary containment standards for bulk transfer areas.~~

(3) Existing law defines “used oil” for purposes of the provisions regulating the handling of used oil and prohibits any person who generates, stores, or transfers used oil from intentionally contaminating used oil with other hazardous waste, except as specified. Existing law allows a used oil recycling facility to mix used oil with a contaminated petroleum product or with an oily waste, other than wastes listed as hazardous under specified federal law, under certain conditions. A violation of the laws regulating used oil is a crime.

This bill would allow a used oil transfer or recycling facility to mix used oil with a contaminated petroleum product or with an oily waste other than wastes listed as hazardous if the facility is authorized by the

Department of Toxic Substances Control pursuant to a hazardous waste facilities permit, standardized permit, or other grant of authorization from the department. Since a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(4) Existing law, the California Integrated Waste Management Act of 1989, requires the Director of Transportation, upon consultation with the California Integrated Waste Management Board, to review and modify all bid specifications relating to the purchase of specified paving materials and backfill materials using certain recycled materials. The act requires the State Procurement Officer, in purchasing materials to be used in paving or paving subbase for use by the Department of Transportation and other state agencies that provide road construction and repair services, to make contracts available for items that utilize recycled materials in paving materials and base, subbase, and previous backfill material, unless the Director of Transportation determines that the use of the materials is not cost-effective based on specified factors.

This bill would require the director and the board, on or before July 1, 2004, to jointly report to the Legislature concerning the implementation of those recycled paving materials provisions, as specified.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 25160.6 is added to the Health and  
2 Safety Code, to read:  
3 ~~25160.6. (a) (1) Except as provided in subdivision (d), a~~  
4 ~~facility operator that rejects an entire shipment of hazardous waste~~  
5 ~~shall sign and date the manifest and note "Shipment Rejected" in~~  
6 ~~the discrepancy indication space and specify the ultimate~~  
7 ~~destination of the hazardous waste in the special handling and~~  
8 ~~additional information space. The transporter shall either return~~

~~the shipment to the generator or transport the shipment to an approved alternate designated facility agreed upon by the generator, in accordance with the requirements of paragraph (2). The signed and annotated manifest shall be returned to the transporter.~~

~~(2) After a facility operator rejects an entire shipment of a hazardous waste, the transporter shall transport the hazardous waste, accompanied by the original manifest, to either the generator or the alternate designated facility, as directed by the facility operator on behalf of the generator. The transporter shall obtain a signature on the manifest from the operator of the alternate designated facility or the generator, whichever receives the rejected shipment.~~

~~(b) (1) Except as provided in subdivision (d), a facility operator that rejects a partial shipment of hazardous waste, shall sign and date the manifest, note "Shipment Partially Rejected" in the discrepancy indication space, identify the rejected portion of the hazardous waste, and specify the ultimate destination of the rejected hazardous waste in the special handling and additional information space. The transporter shall either return the partially rejected shipment to the generator or transport that partially rejected shipment to an approved alternate designated facility agreed upon by the generator pursuant to paragraph (2). A photocopy of the signed and annotated manifest shall be returned to the transporter.~~

~~(2) After a facility operator rejects a partial shipment, the transporter shall transport the rejected hazardous waste, accompanied by a photocopy of the original manifest, to either the generator or the alternate designated facility, as directed by the facility operator on behalf of the generator. The transporter shall obtain a signed certification of receipt from the operator of the alternate designated facility or generator, whichever receives the rejected partial shipment. The generator or alternate designated facility shall provide the department with the original signed certification of receipt and a copy of the manifest within 30 days after the date that the rejected partial shipment is received.~~

~~(c) (1) For purposes of receiving a hazardous waste shipment rejected pursuant to this section, the generator of that hazardous waste shall be considered the designated facility for the receipt of the hazardous waste generated by that generator.~~

~~(2)–~~

25160.6. (a) *An offsite hazardous waste facility operator that rejects a partial or full shipment of hazardous waste shall either return the waste to the generator or direct the waste to an approved alternate designated facility agreed upon by the generator.*

(b) *For purposes of receiving hazardous waste rejected by an offsite hazardous waste facility operator, the generator of the hazardous waste shall be considered a designated facility for the receipt of hazardous waste generated by that generator. For purposes of this section, “designated facility” has the same meaning as that term is defined in Section 66260.10 of Title 22 of the California Code of Regulations, including any amendments thereto.*

(c) *A facility operator that rejects an entire shipment or a partial shipment of hazardous waste pursuant to this section ~~may not be considered the~~ is not a generator of that hazardous waste for purposes of this chapter, including any regulations adopted pursuant to this chapter, nor an arranger for disposal of the waste, nor a transporter who chooses the location for disposal of waste under Chapter 6.8 (commencing with Section 25300) and the federal law definitions referenced therein.*

~~(3) For purposes of this section, “designated facility” has the same meaning as defined in Section 66260.10 of Title 22 of the California Code of Regulations.~~

~~(d) If the Environmental Protection Agency adopts regulations pursuant to the federal act that are not consistent with the requirements of this section, a generator and a transporter shall instead comply with those regulations on and after the effective date of those federal regulations, or on and after the effective date of regulations adopted by the department in accordance with those federal regulations, whichever date occurs first.~~

(d) *The generator of hazardous waste who receives a rejected shipment of that waste may accumulate the rejected waste onsite for 90 days or less, in accordance with the requirements of paragraph (1) of subdivision (a) of Section 66262.34 of Title 22 of the California Code of Regulations. The generator of the rejected waste shall label or mark the waste in a manner that indicates that it is rejected waste and shall include the date it was received by the generator. If a generator of the rejected waste commingles it with*

1 *other wastes, the shorter of any applicable accumulation limits*  
2 *shall apply to the commingled waste.*

3 *(e) To the extent that the United States Environmental*  
4 *Protection Agency adopts regulations under the federal act that*  
5 *preempt or are more stringent than the requirements of this section,*  
6 *offsite hazardous waste facilities generators and transporters*  
7 *shall instead comply with those regulations on and after the date*  
8 *those federal regulations become effective in California, or on and*  
9 *after the effective date of regulations adopted by the department*  
10 *in accordance with those federal regulations, whichever date*  
11 *occurs first.*

12 SEC. 2. Section 25200.19 of the Health and Safety Code is  
13 amended to read:

14 25200.19. (a) A hazardous waste facility that obtains a  
15 hazardous waste facilities permit to receive hazardous wastes from  
16 offsite locations may conduct bulk, packaged, or containerized  
17 hazardous waste unloading operations in accordance with the  
18 requirements of this section, except to the extent that the facility  
19 is subject to conditions and limitations in the permit concerning the  
20 receipt and unloading of hazardous wastes from offsite locations.

21 (b) A hazardous waste facility that has a hazardous waste  
22 facilities permit may conduct bulk, packaged, or containerized  
23 hazardous waste loading operations in accordance with the  
24 requirements of this section, except to the extent that the facility  
25 is subject to conditions and limitations in the permit concerning the  
26 shipment and loading for shipment of hazardous wastes to offsite  
27 locations.

28 (c) Unloading and loading operations subject to subdivisions  
29 (a) and (b) shall be conducted in accordance with all of the  
30 following requirements, unless otherwise specified in the  
31 hazardous waste facilities permit:

32 (1) As part of a loading or unloading operation conducted  
33 within the boundary of a hazardous waste facility, the hazardous  
34 waste shall not be held longer than 10 days outside of an authorized  
35 unit at the facility. The hazardous waste shall be moved directly  
36 between the authorized unit and the transport vehicle and shall not  
37 be held for any time off the transport vehicle outside of the  
38 authorized unit, except for that incidental period of time that is  
39 necessary to safely and effectively move the waste from the



1 transport vehicle to the authorized unit or from the authorized unit  
2 to the transport vehicle.

3 (2) All loading and unloading operations shall be conducted  
4 within the boundary of the hazardous waste facility.

5 (3) There shall be adequate capacity within an authorized unit  
6 at the hazardous waste facility for all hazardous waste being loaded  
7 or unloaded in accordance with this section. Hazardous waste may  
8 not be held on any transport vehicle which, if unloaded, would  
9 exceed the permitted capacity of the originating or receiving unit  
10 at the hazardous waste facility, unless the waste is held on the  
11 transport vehicle as part of an authorized transfer operation.

12 (4) (A) The loading or unloading of bulk hazardous waste  
13 shall be conducted ~~within~~ *with* secondary containment within the  
14 hazardous waste facility, unless otherwise approved by the  
15 department. ~~Any secondary containment required pursuant to this~~  
16 ~~section shall be designed to allow the practical use of trucks and~~  
17 ~~railcars and is not required to comply with the secondary~~  
18 ~~containment requirements for permitted tank and container~~  
19 ~~storage areas set forth in Section 66264.175 of Title 22 of the~~  
20 ~~California Code of Regulations.~~

21 ~~(B) The department may establish specific secondary~~  
22 ~~containment standards for bulk transfer areas for purpose of~~  
23 ~~subparagraph (A), including the use of movable containment~~  
24 ~~devices or systems, consistent with the practical operation of bulk~~  
25 ~~transport vehicles. Secondary containment standards imposed by~~  
26 ~~the department shall require the capability of collecting and~~  
27 ~~containing leaks and spills during the loading and unloading~~  
28 ~~operation. The standards may include the use of movable~~  
29 ~~containment devices or other systems, consistent with the practical~~  
30 ~~operation of bulk transport vehicles.~~

31 ~~(B) The department may establish specific secondary~~  
32 ~~containment regulations for bulk transfer areas for purposes of~~  
33 ~~subparagraph (A). Those regulations shall be designed to allow~~  
34 ~~the practical use of trucks and railcars.~~

35 (d) For purposes of this section, the following definitions  
36 apply:

37 (1) "Loading" means activities associated with removing  
38 packaged or containerized hazardous waste from an authorized  
39 unit or removing bulk hazardous waste from an authorized  
40 container, tank, or unit within a permitted hazardous waste facility,



1 placing it on a transport vehicle within the facility, and shipping  
2 the waste offsite to another location in accordance with this  
3 chapter.

4 (2) “Transport vehicle” means a device, including a trailer, to  
5 propel, move or draw hazardous wastes by air, rail, highway, or  
6 water that is operated pursuant to the requirements of this chapter.

7 (3) “Unloading” means activities associated with the receipt of  
8 bulk, packaged, or containerized hazardous waste at a permitted  
9 hazardous waste facility from an offsite location, by means of a  
10 transport vehicle, and placing that packaged or containerized  
11 hazardous waste into an authorized unit or placing that bulk  
12 hazardous waste into an authorized container, tank, or unit within  
13 the facility in accordance with this chapter.

14 (e) The requirements of this section do not apply to hazardous  
15 waste being held or transferred pursuant to subparagraph (B) of  
16 paragraph (6) of subdivision (b) of Section 25123.3.

17 SEC. 3. Section 25250.7 of the Health and Safety Code is  
18 amended to read:

19 25250.7. (a) Except as provided in subdivision (b) or (c), no  
20 person who generates, stores, or transfers used oil shall  
21 intentionally contaminate used oil with other hazardous waste  
22 other than minimal amounts of vehicle fuel.

23 (b) A used oil transfer or recycling facility authorized by the  
24 department pursuant to Section 25200, 25200.5, or 25201.6 may  
25 mix used oil with a contaminated petroleum product or with an oily  
26 waste other than wastes listed as hazardous under the federal act,  
27 if both of the following conditions apply:

28 (1) If the resultant mixture is subject to regulation as a  
29 hazardous waste under paragraph (2) of subsection (b) of Section  
30 279.10 of Title 40 of the Code of Federal Regulations, it is  
31 managed as a hazardous waste in accordance with all applicable  
32 hazardous waste regulations.

33 (2) The resultant mixture is used to produce recycled oil, as  
34 defined in paragraph (3) of subdivision (a) of Section 25250.1, at  
35 a used oil recycling facility solely by means of a process that has  
36 been specifically authorized by the department.

37 (c) A generator or transporter may mix used oil with one or  
38 more contaminated petroleum products if the mixture is managed  
39 in accordance with Section 25143.2 or if all of the following  
40 conditions apply:





1 (1) If the resultant mixture is subject to regulation as a  
2 hazardous waste under paragraph (2) of subsection (b) of Section  
3 279.10 of Title 40 of the Code of Federal Regulations, it is  
4 managed as a hazardous waste in accordance with all applicable  
5 hazardous waste regulations.

6 (2) (A) Except as provided in subparagraph (B), the resultant  
7 mixture is transported to a used oil recycling facility that issues a  
8 statement, in writing, to the generator or transporter that the  
9 mixture will be used to produce recycled oil, as defined in  
10 paragraph (3) of subdivision (a) of Section 25250.1, at a facility  
11 authorized to operate pursuant to Section 25200 or 25200.5 solely  
12 by means of a process that has been specifically authorized by the  
13 department.

14 (B) If the resultant mixture is transported to a used oil recycling  
15 facility located in another state, that facility is authorized by the  
16 agency authorized to implement the federal act in that state.

17 (3) The mixing is not conducted in a manner that violates  
18 subparagraph (C) of paragraph (3) of subdivision (a) of Section  
19 25250.1.

20 (4) The transporter tests the halogen content of the used oil to  
21 demonstrate compliance with clause (vi) of subparagraph (B) of  
22 paragraph (3) of subdivision (a) of Section 25250.1 before mixing  
23 the used oil with the contaminated petroleum product.

24 SEC. 4. Section 42702 is added to the Public Resources Code,  
25 to read:

26 42702. On or before July 1, 2004, the Director of  
27 Transportation and the board shall jointly report to the Legislature  
28 concerning the implementation of this article.

29 (a) The report shall do all of the following:

30 (1) Identify and attach copies of bid specifications relating to  
31 the purchase of materials specified in Section 42700, using  
32 recycled materials.

33 (2) Report on the number of contracts and percentage of  
34 purchases of materials using each recycled material enumerated in  
35 Section 42700.

36 (3) Report analyses conducted by the Department of  
37 Transportation regarding the quality and cost of paving materials  
38 that utilize recycled materials.

1 (4) Report on recommendations for increasing the use of  
2 recycled material in paving materials consistent with equal or  
3 better quality and equal or lower cost.

4 (b) To the extent that the recycled materials are derived from  
5 used oil recycling, the board shall in addition, consider and include  
6 in the report steps it could take to enhance the use of those  
7 materials, whether by research, education, or other means,  
8 pursuant to Chapter 4 (commencing with Section 48600) of Part  
9 7.

10 SEC. 5. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.

